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 Plaintiff in Proper Person

UNITED STATES DISTRICT COURT  
 District of Nevada

CODY B. WEST

PLAINTIFF

vs.

BANK OF AMERICA, N.A. and  
 BANK OF AMERICA HOME LOANS and  
 BAC HOME LOANS SERVICING LP,  
 RECONTRUST, and  
 MERS - Mortgage Electronic Registration  
 Services

DEFENDANTS

Case No.: 2:10-cv-01950-GMN-LRL

OPPOSITION TO DEFENDANTS REPLY  
 OF MOTION TO DISMISS AMENDED  
 COMPLAINT  
 And REQUEST FOR DISMISSAL OF  
 DEFENDANTS MOTION TO DISMISS  
 AMENDED COMPLAINT

Cody B. West, Plaintiff, in proper person, submits his Opposition to Defendants Reply of  
 Motion to Dismiss Amended Complaint.

In the Motion filed with the Court it is evident that the Defendants cannot show  
 ownership of the alleged Mortgage Loan. The paramount fundamental issue in this case is  
 Holder in Due Course and that Defendants do not own, have not owned and do not even know  
 where ownership of this loan resides.

Defendants response to the Amended Complaint fails to address the undisputed fact that  
 Bank of America and its subsidiary companies do not own the mortgage loan in question. They  
 have asked for Dismissal by stating Plaintiff defaulted on a Mortgage Loan that they can in no  
 way prove ownership of. Plaintiff was in default on this loan but determined by audit and legal

1 attempt to satisfy loan with pay-off that Defendants have no evidence of ownership of the  
 2 mortgage loan in question. Defendants are now being sued by the States of Nevada, Arizona as  
 3 well as countless suits being filed in practically every state in the nation for their lack of  
 4 standing, holder in due course, fraud, mishandling of loan documents through their subsidiary  
 5 companies as well as through MERS. To this extent, the Attorney General, State of Nevada, said  
 6 on ABC news that due to Bank of America's arrogance and unwillingness to cooperate that the  
 7 State of Nevada had no alternative but to file suit against Bank of America for their wrong  
 8 doings in handling mortgage loans in this State.

9 Defendants do not now own nor have ever owned this mortgage by failure to hold and  
 10 possess the original Deed of Trust Mortgage, original note, and other pertinent documents. They  
 11 persist in bringing into the Court counterfeit copies of documents that anyone can take from the  
 12 internet which our contention would be fraud upon the Court. In prior documents, they have also  
 13 shown as exhibits copies of correspondence between Plaintiff and Defendants that have been  
 14 altered and are not complete.

#### 15 Response to Defendants Legal Argument

##### 16 A. Complaint Violates Rule 8(a)

17 As stated in Defendants Argument on page 2 line 13, Plaintiff has sued Bank of America  
 18 N.A. (BOA), Bank of American Home Loans, a wholly owned subsidiary of BOA, Bank of  
 19 America Home Loans Servicing LP, a wholly owned subsidiary of BOA, Recontrust, a wholly  
 20 owned subsidiary of BOA, and MERS. It is proper in cases where more than one defendant is  
 21 adjointed by claim on the mortgage in question that each and all related parties be brought forth  
 22 in the suit. The original lender sold the mortgage to Countrywide who was then acquired by  
 23 BOA. BOA through its acquisition of the mortgage in question, assumed all duties and  
 24 responsibilities of the same. Plaintiff continues to contend that the mortgage loan in question  
 25 was sold through securitization countless times. Once again, the paramount fundamental issue in  
 26 this case is Holder in Due Course.

##### 27 B. Many of Plaintiff's Claims Are Barred by the Statutes of Limitations

28 Plaintiff objects to Defendants allegations that many of the claims are time barred. Once  
 again, the paramount fundamental issue in this case is Holder in Due Course.

1 C. Defendants Need Not Show the Original Note

2 In Defendants reply on page 3 line 7, the statement that Defendants do not need to show  
3 the original note has been shown by a Landmark decision in the Supreme Court State of Kansas  
4 and on January 7, 2011 the State of Massachusetts Supreme Court in another Landmark decision  
5 as to holder in due course as false. In January, 2011, Bank of America has been made to pay 3  
6 BILLION DOLLARS to Fannie Mae and Freddie Mac for their mishandling of mortgage loans  
7 and which the mortgage loan in question may be a part.

8 To show standing with the Court Defendants must have access to the original Deed of  
9 Trust, the Mortgage Note and supporting original documents. These Landmark cases have  
10 proven that mortgage banks must prove ownership with original documents instead of mere  
11 copies. In the case of Mortgage Electronic Registration Systems, Inc. v. Chong, Case No. 2:09-  
12 CV-0661-KJD-LRL (2009), the United States District Court, District of Nevada stated that  
13 "MERS did not establish it was a real party in interest. MERS was unable to prove it had  
14 possession of the note or at least provide evidence that it was a representative of the mortgage  
15 loan holder, which it failed to do." Additionally, in a Landmark decision in the Kansas Supreme  
16 Court, National Bank v. Kesler, 289 Kan. 528, 216 P.3d 158(2009). "Kan. Stat. Ann. § 60-260(b)  
17 allows relief from a judgment based on mistake, inadvertence, surprise, or excusable neglect;  
18 newly discovered evidence that could not have been timely discovered with due diligence; fraud  
19 or misrepresentation; a void judgment; a judgment that has been satisfied, released, discharged,  
20 or is no longer equitable; or any other reason justifying relief from the operation of the judgment.  
21 The relationship that the registry had to the bank was more akin to that of a straw man than to a  
22 party possessing all the rights given a buyer." Also in September of 2008, a California Judge  
23 ruling against MERS concluded, "There is no evidence before the court as to who is the present  
24 owner of the Note. The holder of the Note must join in the motion." Wells Fargo v. Reyes, 867  
25 N.Y.S.2d 21 (2008). Case dismissed with prejudice, fraud on the Court and Sanctions because  
26 Wells Fargo never owned the Mortgage. In LaSalle Bank v. Ahearn, 875 N.Y.S. 2d 595 (2009),  
27 the case was dismissed with prejudice - lack of standing. In another case, Novastar Mortgage,  
28 Inc. v. Snyder 3:07CV480 (2008), it was ruled that "Novastar has the burden of establishing its  
standing. It has failed to do so."

1 D. Plaintiff's Complaint Does Not State a Claim for Fraud

2 Defendants argue that Plaintiff does not state a claim for fraud which is not the  
3 fundamental and paramount issue of this case. Yet courts in the states of Florida, Tennessee,  
4 Kentucky, Arkansas, Minnesota, New York, New Jersey, Massachusetts, as well as numerous  
5 others, have all brought similar suits against Bank of America and their subsidiaries for various  
6 types of fraud in the handling of their mortgage loans. Once again, the paramount fundamental  
7 issue in this case is Holder in Due Course.

8 E. Plaintiff's Attack on MERS Has Been Rejected

9 MERS cannot show by evidence that it is a party of interest - holder in due course - of the  
10 mortgage loan in question and therefore any transfer of the deed of trust or foreclosure involving  
11 MERS is fraudulent.

12 The cases referred to by Defendants on page 6 would without a doubt be overturned by  
13 appeal courts in light of all of the Landmark supreme court decisions as well as countless other  
14 appeal court decisions throughout this country. Once again, the paramount fundamental issue in  
15 this case is Holder in Due Course.

16 F. No Wrongful Foreclosure Due to Securitization

17 At line 4, page 7, Defendants continue to state that the Plaintiff is in foreclosure on his  
18 property which Plaintiff does not deny but felt it would be inappropriate to continue paying on a  
19 mortgage where ownership of same was the paramount question. Therefore the statements made  
20 by Defendants about wrongful foreclosure due to securitization is denied by Plaintiff. However,  
21 Plaintiff does have a claim against Defendants for fraud but this is not the paramount cause of  
22 action of this suit. Plaintiff does defend his assertions in his Motion regarding securitization.

23 G. Plaintiff's Silence is a Tacit Admission that Defendants Have No Liability Under TILA

24 In response to statements made on page 7, line 11 - Plaintiff has not been silent about the  
25 liability under TILA and totally reject Defendants claim. Once again, this is not the paramount  
26 fundamental cause of action of this case.

27 H. Failure to Accept Tender of Payment is Not a Valid Claim

28 In response to statements made on page 7, line 17, failure to accept tender of payment is a  
rightful claim for voiding the mortgage loan. Plaintiff can show that it submitted a payment

1 instrument for the full amount that was rejected by Defendants because conditions for payment  
2 stated that the original loan documents must be presented to Acting Agent for payment. This  
3 supports the paramount fundamental issue in this case which is Holder in Due Course.

4 I. Plaintiff Has Failed to Establish a Fiduciary Duty

5 In response to statements made on page 7, line 23 - Plaintiff totally denies that  
6 Defendants did not owe Plaintiff a fiduciary duty. Once again, the paramount fundamental issue  
7 in this case is Holder in Due Course.

8 J. Counterfeit Securities is Not a Valid Claim

9 In response to statements made on page 8, line 1 - Defendants claim that Counterfeit  
10 securities is not a valid claim is totally rejected by Plaintiff and is a cause of action. Once again,  
11 the paramount fundamental issue in this case is Holder in Due Course.

12  
13  
14 In conclusion, Defendants in this case cannot show standing - holder in due course -  
15 therefore Plaintiff moves that the Court dismiss Defendants Motion to Dismiss for lack of  
16 standing in this case and grant Plaintiff's request to dismiss Defendants Motion for Dismissal.

17  
18 Dated this 11 day of January, 2011.

19 Cody B. West  
20 Cody B. West  
21 Plaintiff  
22 In Proper Person  
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24  
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26  
27  
28

CERTIFICATE OF MAILING

I, Cody B. West, hereby certifies that a copy of the Opposition To Defendants Reply Of Motion To Dismiss Amended Complaint And Request For Dismissal Of Defendants Motion To Dismiss Amended Complaint filed on the 11 day of January, 2011, in the above-entitled case was mailed by me on January 11, 2011 by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States mail, to

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Dated: January 11, 2011

  
Cody B. West  
Plaintiff  
In Proper Person